

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT))
ANTITRUST LITIGATION)
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) Case No. 3:07-cv-5944
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HEARING BEFORE SPECIAL MASTER HON. MARVIN QUINN
San Francisco, California
Wednesday, October 5, 2016

Reported by:
JOANNA BROADWELL
CSR No. 10959
Job No. 2459187-B

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PROCEEDINGS before SPECIAL MASTER HON. MARVIN
QUINN taken at Two Embarcadero Center, Ste. 1500, San
Francisco, California, beginning at 3:01 p.m. and ending
at 4:24 p.m. on Wednesday, October 5, 2016,
before JOANNA BROADWELL, Certified Shorthand
Reporter No. 10959.

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20 Also Present: Marlo Cohen (By telephone).

1 San Francisco, California, Wednesday, October 5, 2016

2 3:01 p.m.

3 TRANSCRIPT OF PROCEEDINGS

4 SPECIAL MASTER QUINN: All right. We'll commence
5 the hearing now. Could attorneys on the phone identify
6 themselves, please?

7 MR. SHEA: Jeff Shea.

8 MS. KIRKHAM: Tracy Kirkham for Cooper & Kirkham.

9 MR. BATTIN: Tim Battin from Straus & Boies.

10 MR. STEWART: Dennis Stewart from Hulett, Harper
11 & Stewart.

12 MR. GRALEWSKI: Bob Gralewski from Kirby
13 McInerny.

14 MR. GOLDBERG: Joe Goldberg in Albuquerque, New
15 Mexico.

16 MR. PATANE: Joseph Patane, San Francisco.

17 MS. MCKENNA: Elizabeth McKenna from Milberg.

18 SPECIAL MASTER QUINN: Who was it from Milberg?

19 MS. MCKENNA: Elizabeth McKenna.

20 SPECIAL MASTER QUINN: Thanks.

21 MR. BIRKHAUSER: Dan Birkhaeuser from Bramson
22 Plutzik, Mahler & Birkhaeuser.

23 MS. COHEN: Marlo Cohen.

24 SPECIAL MASTER QUINN: All right. I got
25 Mr. Shea, Ms. Kirkham, Mr. Battin, Mr. Stewart,

1 Mr. Gralewski, Mr. Goldberg, Mr. Patane, Ms. McKenna,
2 Mr. Birkhaeuser and Ms. Cohen. Did I miss anyone?

3 All right. All right. Just a little
4 housekeeping. I received this morning an ECF filing
5 Docket 4929, a declaration of Mr. Scarpulla. In
6 general, my policy is I'm not going to receive any
7 additional filings. But this was received before the
8 oral hearing and it relates to something that happened
9 at a hearing yesterday or the day before. So I am going
10 to receive this and consider it.

11 But I ruled earlier today that a filing Mr. Shea
12 made and I believe maybe Mr. Papale also made a recent
13 filing that they made after the close of their oral
14 hearings, and I'm not going to consider those because
15 nobody has had a chance to register any objections to
16 them, and there just has to be an end to this at some
17 point.

18 So I will receive the Scarpulla declaration,
19 Docket 4929. And the other point is that I don't know
20 to what extent the hearing today is going to get into
21 the Cooper objection. Mr. Cooper indicated he could not
22 be present, and I don't want to be unfair to him.
23 Ms. Kirkham is on the phone and I'm sure is able to
24 defend the firm. But I do need to let you know that we
25 can go over an hour. We can go to about 4:30 or so. I

1 don't know what the court reporter's time is, but we're
2 not going to go much beyond that. So let's bear that in
3 mind and get this done quickly and efficiently. That
4 brings us to Mr. Scarpulla.

5 MR. SCARPULLA: Yes, Your Honor.

6 SPECIAL MASTER QUINN: Would you like to add
7 something to the papers you filed which I have read?

8 MR. SCARPULLA: I don't have a lot to add, Your
9 Honor, except to say that I would like to again ask that
10 we get a copy of whatever it was between Mr. Alioto and
11 the Zelle firms because that affects my allocation. It
12 affects the allocation of everybody in this case.
13 Because the argument that I would make is that based
14 upon -- as I understand it, what the agreement was,
15 Zelle was essentially to act as the co-lead counsel. If
16 that's the case, then whatever I did while I was there
17 was as part of an entity that was the shadow co-lead.
18 And everything I did, Your Honor, in this case was
19 either to benefit -- everything I did was to benefit the
20 class, but it was done either because it was something
21 that Zelle was responsible for and because I was the
22 senior antitrust lawyer there at the time, or it was
23 because the special -- the special master in charge of
24 both discovery and settlement asked me to get involved
25 in it.

1 MR. ALIOTO: Your Honor, I want to interject an
2 objection. It's a standing objection, continuing
3 objection to any statements attributed to the Special
4 Master Walker. That's complete hearsay. That's No. 1.
5 No. 2, it's completely unfair to try and inject Special
6 Master Walker into a private fee allocation dispute
7 where he's a special master, where communications with
8 him are subject to a mediated privilege. And this is
9 one of the recurring themes by Mr. Scarpulla that he was
10 given all of these instructions --

11 SPECIAL MASTER QUINN: Just make the objection.

12 MR. ALIOTO: Objection as to hearsay. No
13 foundation, and improper to the extent you're trying to
14 implicate the Special Master in a private fee
15 allocation.

16 SPECIAL MASTER QUINN: Okay. I'm ready to roll.
17 So there may be other statements that have hearsay
18 problems. All that's been said so far is that
19 Mr. Scarpulla had conversations with Special Master
20 Walker and that Special Master Walker asked him to do
21 some things. I think at the moment those statements are
22 offered for the fact that they were made not for the
23 truth of the matters asserted, so it's not hearsay. And
24 as to the standing and propriety of injecting Judge
25 Walker into this, Judge Walker is here whether he likes

1 it or not. And there's been reference to this in the
2 omnibus fee motion. I mean, it's there, and as long as
3 comments about the -- my co-special master remain
4 respectful and so on, I don't see a problem with it.

5 MR. ALIOTO: But may I have a continuing
6 objection so I don't pipe up every time it's raised?

7 SPECIAL MASTER QUINN: You may.

8 MR. SCARPULLA: As Your Honor knows, the
9 discussions that went on culminated in that proposed
10 order that Judge Walker entered and which is in the
11 record.

12 SPECIAL MASTER QUINN: So as I understand the
13 significance of the interchanges with Judge Walker, they
14 really -- I think they have two areas in which they're
15 perhaps significant. One is whether Mr. Scarpulla --
16 whether it's appropriate to compensate him for the time
17 he spent talking to Mr. -- Judge Walker, and Mr. Alioto
18 has been critical of that and suggested he should not be
19 compensated for that. And then it has some significance
20 because it bears on the criticisms Mr. Scarpulla makes
21 of Mr. Alioto's handling of his tasks as special master,
22 which goes to whether the allocation should be adjusted.
23 So I think it has two areas of significance. I just
24 want to be sure I'm understanding it correctly.

25 MR. SCARPULLA: Absolutely.

1 MS. KIRKHAM: Excuse me, Special Master, could I
2 be heard? It also is a third area of significance which
3 is Mr. Alioto's claim that Cooper & Kirkham's multiplier
4 should be negative because of this misleading of Special
5 Master Walker into the R&R which resulted in the counsel
6 being diverted from trial preparation harmed the class.
7 So lead counsel himself has certainly interjected Judge
8 Walker into these proceedings in a real way.

9 SPECIAL MASTER QUINN: I take your point.
10 Go ahead, Mr. Scarpulla.

11 MR. SCARPULLA: I do not intend to say anything
12 that would infringe on any kind of settlement discussion
13 that was in terms of a mediation in front of Judge
14 Walker. I attended none of those, so I can't tell you
15 what occurred in any mediation with Judge Walker, and I
16 don't -- even if I had attended and knew, I wouldn't
17 tell you because it's covered by privilege. So I want
18 to be very clear about that.

19 The other thing I wanted to say, Your Honor, is
20 that Your Honor, I gave you all of my time sheets.

21 SPECIAL MASTER QUINN: Yes.

22 MR. SCARPULLA: And my time sheets are pretty
23 clear about what I did. There's no wasted time.
24 Mr. Alioto points to a couple of instances where there
25 is a reference to LCDs. That's because something that

1 occurred in that case was relevant to an issue that was
2 coming up in CRTs. That's the only reason they're in
3 there. And throughout Mr. Alioto's time sheets, the
4 ones I could read because they're handwritten, there was
5 references that he looked at a whole group of -- a whole
6 number of things in the LCD litigation. So, I mean,
7 that's -- it's not unusual that in one case there would
8 be a brief or something like that that would be relevant
9 to another case you're working on, then you would look
10 at it.

11 He also points out that there are several
12 instances in which there were -- I had conversations
13 about settlement. And he cites you to three of them
14 early on. I believe they're in 2008. All of those
15 conversations, Your Honor, were with Mr. Joel Sanders,
16 who called me and asked me if I would please arrange a
17 meeting of Plaintiff's counsel so that he could make a
18 proffer to Plaintiff's counsel similar to the one he had
19 done in LCDs where he would give us a roadmap of the
20 alleged conspiracy, fixed prices of CRDs in return for
21 which we would give him a -- an early out settlement of
22 \$10 million.

23 MR. ALIOTO: Excuse me. Excuse me just a moment,
24 your Honor. Continuing objection. Hearsay.

25 SPECIAL MASTER QUINN: Why -- I don't want to

1 drill down too far into --

2 MR. SCARPULLA: I understand.

3 SPECIAL MASTER QUINN: But why is Mr. Sanders
4 calling you instead of lead counsel?

5 MR. SCARPULLA: Because he doesn't know Mario,
6 number one. Number two, I was the one in the case that
7 had all the experience. I've been at this for almost 50
8 years, Your Honor. I've got all of the awards. And
9 throughout this nation, you know, antitrust lawyer of
10 the year, best lawyers in America, super lawyers and the
11 most prestigious of all of them.

12 SPECIAL MASTER QUINN: I wasn't questioning your
13 experience.

14 MR. SCARPULLA: That's why I was calling, because
15 I know what I'm doing and Mario doesn't, period. That's
16 the end. So I called Mr. Alioto and told him that Joel
17 wanted to meet and we set up a meeting. And that's why
18 there were those entries. I think it's a total of maybe
19 30 minutes. Those are those entries and that's the
20 reason for it. And if there are any others, it's only
21 because some defense lawyers called me and asked me to
22 get involved. And I kept telling them, "Call Special
23 Master Walker. He's the one who is in charge of this.
24 If you have a problem, call him and tell him what it
25 is." And so there are indeed other short entries about

1 settlement.

2 I don't know what else to tell Your Honor. I
3 mean, I did everything I was supposed to do. And by the
4 way, the order appointing Mr. Alioto required him --
5 didn't -- it wasn't, you know, it was mandatory that he
6 had to keep -- he had to have record -- record and
7 administer all time and expenses of counsel and their
8 staff. My firm, as I understand it, reported on a
9 fairly regular basis to the accountancy firm that
10 Mr. Alioto told us to report to. Presumably he got
11 copies of them and read them. And if there was a
12 problem, he should have called me and told me, "Don't do
13 this." Nobody called me and told me not to work on this
14 case. Nobody. Okay?

15 By the way, that's the one thing -- that's how
16 you could tell people kept contemporaneous time sheets,
17 because if they didn't report it to that accountancy
18 firm and they didn't do it, I'll bet you Mr. Alioto
19 didn't send his time sheets in.

20 MR. ALIOTO: Just for the record, Your Honor,
21 Mr. Scarpulla had his opportunity to criticize my firm.
22 That was Monday. That was two days ago. Standing
23 objection that this is out of the scope of this hearing.
24 I would like to have some time here to talk about
25 Mr. Scarpulla.

1 SPECIAL MASTER QUINN: You will have time. Okay.
2 Let me just say, I mean, nobody is under oath here.
3 This is not testimony. I am really, you know, not
4 applying rules of evidence in these hearings. I'm just
5 trying to get information to clarify any questions that
6 remain after reading the written submissions. And so,
7 you know, I'm trying to run an orderly discussion here,
8 but I'm not really applying the rules of evidence.
9 So -- but it's, you know, fair if you want to object and
10 bring my attention to statements that are being made
11 that for some reason seem unreliable.

12 Can we see if I've got my brain around the Zelle
13 situation? As I understand it, while you were still at
14 Zelle you recorded time on this case of about \$424,000
15 at historic rates.

16 MR. SCARPULLA: Correct.

17 SPECIAL MASTER QUINN: And you made a deal with
18 Zelle when you left that you'd split that 50/50. Half
19 would belong to Zelle; half would belong to you, and you
20 would submit a motion in this case for your half.

21 MR. SCARPULLA: No, just a declaration.

22 SPECIAL MASTER QUINN: Okay. Declaration --
23 relating to your half, and Zelle would submit a
24 declaration containing the other half of your time.

25 MR. SCARPULLA: Correct.

1 SPECIAL MASTER QUINN: But you were not to be --
2 you were not to get any money from Zelle from the
3 \$212,000 of your fees that it kept. Any money that came
4 in for that time was to go to Zelle and stay there,
5 correct?

6 MR. SCARPULLA: Well, that all depends. If
7 the -- if the Lodestar, which was a -- half of my
8 Lodestar, 200 and some odd thousand which was assigned
9 to me as a number, if that was paid out of the
10 attorneys' fees, the gross attorneys' fees plus an
11 identical multiple that Zelle got that was mine and
12 whatever the same on the other half that they kept, that
13 was theirs, I got nothing from them. However --

14 SPECIAL MASTER QUINN: Let me just continue.
15 That was the deal, but then for whatever reasons, Zelle
16 decided not to submit in its fee application your
17 \$212,000, correct?

18 MR. SCARPULLA: Correct. Correct.

19 SPECIAL MASTER QUINN: And you are now asking the
20 Court to essentially give that 212,000 that you agreed
21 to give to Zelle back to you so that you can be
22 compensated for it on the theory that it was your time
23 and somebody should be compensated for it.

24 MR. SCARPULLA: Right. And if they don't want
25 it, somebody should get it. It was time spent, Your

1 Honor, for the benefit of the class. If they don't want
2 it, I'll take it. If they want it, they can have it.

3 SPECIAL MASTER QUINN: I'm not expressing any
4 opinion. I just want to be sure I've got it straight.

5 MR. SCARPULLA: I understand.

6 SPECIAL MASTER QUINN: Mr. Micheletti, as I
7 gather, the Zelle firm has given up any claim on the
8 common fund for the 212,000 that represents one half of
9 Mr. Scarpulla's Lodestar?

10 MR. MICHELETTI: That's correct, your Honor. And
11 I do want to correct one --

12 SPECIAL MASTER QUINN: Let me ask you another
13 question. Does the Zelle firm -- I don't know how
14 important this is, but does the Zelle firm have any
15 objection to Mr. Scarpulla essentially recapturing that
16 half and putting in a claim himself?

17 MR. MICHELETTI: I don't think he's entitled to
18 it. I think the agreement speaks for itself. The
19 agreement -- Zelle owns all the time. Zelle entered an
20 agreement assigning to Mr. Scarpulla the \$212,000. He
21 can do whatever he wants with it. We went through the
22 audit process. Time was cut. Some of Mr. Scarpulla's
23 time was cut, Mr. Corbitt's, some of mine. I mean,
24 there was -- time was cut, obviously, and there was an
25 amount left of Mr. Scarpulla's time. It was -- I

1 believe it was close to what ultimately lead counsel to
2 put down as the current Lodestar, maybe \$66,000. So at
3 the end of day after the audit, that was the real
4 question, are we going to put in that sum. And we chose
5 not to do so.

6 SPECIAL MASTER QUINN: Okay.

7 MR. MICHELETTI: I also want to correct one
8 thing. There was no agreement, nothing in the
9 assignment agreement, the separation agreement that
10 required us to submit his time in connection with that.
11 We are free to do with the \$9 million Lodestar that we
12 had, whatever we wanted to, and we weren't bound to do
13 anything. That was our call. And there was also
14 nothing in the agreement regarding Mr. Scarpulla
15 obtaining an identical multiplier. I mean, maybe he
16 gets one at the end of the day. I don't know. But
17 there was nothing in the agreement that addressed that.

18 SPECIAL MASTER QUINN: Okay.

19 Go ahead, Mr. Scarpulla.

20 MR. SCARPULLA: Your Honor, I basically -- I've
21 said everything in my papers, Your Honor.

22 SPECIAL MASTER QUINN: How refreshing.

23 MR. SCARPULLA: I don't want to keep you here
24 unnecessarily. If you have questions for me, then ask
25 me. If I want to respond to something that somebody

1 says, I'll do it.

2 SPECIAL MASTER QUINN: Well, I'll reserve my
3 questions until I've heard from Mr. Alioto.

4 Go ahead.

5 MR. ALIOTO: Thank you, Your Honor. And we
6 recognize that it's all in the papers and that you're
7 going to give weight to what's in the papers, but I just
8 want to make sure that those points in the papers got
9 across because this is an extraordinary situation. We
10 have a lawyer who applied for a lead counsel position
11 and was not given that appointment.

12 It happens every day. It's happened to me on
13 numerous occasions. Members of the Zelle firm got on
14 board and joined the effort in a non-lead role.
15 Unbeknownst to me, that from very, very early on in the
16 case, Mr. Scarpulla was not on board. And it's very,
17 very unfortunate that that happened. I wish it didn't
18 happen, but I had no control over it and I had no
19 knowledge of it.

20 And what we have here over the course of this
21 case, not so much in 2011, 2012, 2013, that's when Mr.
22 Scarpulla was pretty well engaged in the LCD case. In
23 fact, if you look at his time records in 2012, there's
24 not one time entry, right? He was doing LCD.

25 SPECIAL MASTER QUINN: No, he's got some time in

1 2008 and then he's got some, you know, more significant
2 time in 2013 --

3 MR. ALIOTO: Right.

4 SPECIAL MASTER QUINN: -- '14 and '15.

5 MR. ALIOTO: So there was a little time early on,
6 but then when he finished up with LCD, he -- I don't
7 know what the best term to use is, so maybe I just won't
8 use any term.

9 SPECIAL MASTER QUINN: Probably a good idea.

10 MR. ALIOTO: He decided to get involved in this
11 case. He made that decision. He decided what to do.
12 He decided what ought to be done in the case. He, based
13 on his opinion of his legal abilities, got involved,
14 unbeknownst to me, unbeknownst to the leading lawyers in
15 the case who were handling the case. And there was
16 absolutely no reason to be doing that. That is the
17 problem. You have a lawyer substituting his views and
18 his opinions and what he would like to do in the case,
19 substituting it for the opinions of the duly appointed
20 lead counsel and lead counsel's team.

21 Now, what would happen if everybody in this case,
22 the 50 law firms took that approach? It's bad enough to
23 have one or two lawyers doing that. It's a very, very
24 serious detriment to the case. And that's what we have
25 from Mr. Scarpulla. I think you saw a little of this in

1 the LCD case, some of the same players, where you have
2 factions running these cases and factions working on
3 settlements and factions setting up even depositions and
4 having disputes about who is going to go to depositions
5 and who is not.

6 I'm not going to go on and on on this because I
7 think you get the message. That's what happened here
8 from very, very early on. If there is criticism of lead
9 counsel -- and I had over the course of -- I wouldn't
10 call it criticism, but I had some very pointed
11 suggestions. And I had some very constructive advice
12 and e-mails and letters given to me over the course of
13 the case from my co-counsel which I greatly appreciated.

14 SPECIAL MASTER QUINN: For example, I think I've
15 seen a letter from October 2014 that Mr. Scarpulla and
16 Mr. Goldberg and some other people wrote you, basically
17 saying, "Hey, you know, are you ready to go to trial in
18 this case, and can we get our act together and can we
19 help you?" Is there anything improper in your mind
20 about lawyers writing you a letter --

21 MR. ALIOTO: No, not at all. In fact, that's the
22 point I was getting at, that I got that over the course
23 of the case from other people. And this was a little
24 bit more of a formal request because there were a number
25 of lawyers on it. And it went through a laundry list of

1 items in the case. And I responded. And not only did I
2 respond, but I got on the phone with everybody on that
3 letter and talked to them about the case, including
4 Mr. Cooper and Scarpulla.

5 SPECIAL MASTER QUINN: So where -- where do you
6 think -- I mean, I've heard a number of things that
7 Mr. Scarpulla did which he doesn't dispute. He was
8 critical of the LG settlement. He was perhaps critical
9 of another early settlement. He thought they were too
10 low. He got involved in the issues with the California
11 Attorney General's office. He, you know, talked to
12 Judge Walker about various things. Where is it that you
13 feel he overstepped the line of propriety that separates
14 giving constructive advice to lead counsel, disagreeing
15 with lead counsel and becoming disruptive and
16 counterproductive?

17 MR. ALIOTO: In every one of those situations you
18 just identified, every one of them.

19 SPECIAL MASTER QUINN: In every one you thought
20 he was over the line on the wrong side?

21 MR. ALIOTO: First of all, it was unknown to lead
22 counsel. That's number one, unknown. Number two, let
23 me give you the example of the dealing with the
24 California A.G.

25 I dealt with the California A.G. Other people

1 dealt with the California A.G. And the primary person
2 involved with the California A.G. was a former assistant
3 attorney general for the State of Michigan. He was
4 dealing with the A.G. We're trying to work out
5 problems. The objectors refer to that as a problem with
6 the A.G. It's actually a problem with Philips.

7 Philips entered into a settlement with the A.G.
8 that could be construed as giving a very broad release
9 of claims. It's a Philips problem. But we were working
10 with the A.G. and Philips to get that resolved. And
11 when you're working through channels like that with the
12 A.G. and you have somebody else out there doing things,
13 you don't have control over the situation. The A.G. is
14 dealing with two people. He's playing the two against
15 each other. That's why you have a lead counsel. Let me
16 give you another example that might -- that might
17 sharpen this up as well.

18 You early on and even later on as we're
19 approaching trial, you're in pretty serious settlement
20 negotiations with the defendants. You know, in these
21 cases, there is this issue that comes up sometimes of a
22 reverse auction. And the minute the defendants get wind
23 that there are other people involved in the settlement
24 negotiations and the defendants get wind that they may
25 be able to strike a better deal with somebody else, it

1 is just murder for the settlement negotiations if the
2 defendants perceive that there's no cohesiveness among
3 the plaintiff's group. And that's what we had here with
4 Mr. Scarpulla and Mr. Cooper, unbeknownst to me at
5 first, and then it became apparent.

6 And that is very, very difficult, Your Honor.
7 I'm hanging on trying to get the most money for the
8 class, and I'm facing this prospect of somebody else
9 trying to reverse auction it at a lower price to get the
10 quick settlements. Very difficult situation. Who told
11 Mr. Scarpulla and Mr. Cooper to do that? Not me. Not
12 me. Suppose Mr. Goldberg and Mr. Birkhaeuser and
13 Mr. Battin and some of these other people that are all
14 working together on the case, suppose they were all out
15 there doing that.

16 SPECIAL MASTER QUINN: Okay.

17 MR. ALIOTO: Okay.

18 SPECIAL MASTER QUINN: Any other points? I mean,
19 I think I've got that point.

20 MR. ALIOTO: And if I might, in the sessions
21 before Judge Walker where Mr. Scarpulla was present and
22 Mr. Baranini, the California A.G., there were definite
23 statements to the mediator by Mr. Scarpulla to the
24 effect that we were grossly overvaluing the case, that
25 he put some value, for example, on Samsung of

1 \$50 million. Those are very difficult things because
2 you have someone within your own camp talking to the
3 settlement mediator. And in order to get up from those
4 statements by Mr. Scarpulla to get back to where we
5 think we should be and what the evidence would support
6 and what all the workup in the case would support, it
7 took work to get us back where we thought we should be,
8 and we were able, thankfully, to do it.

9 It took us a lot longer, and it took us effort
10 that we shouldn't have had to expend, but we were able
11 to do that. That's the -- that is the background on
12 these two individuals, Mr. Cooper and Mr. Scarpulla.
13 They took it upon themselves to -- I'll borrow
14 Mr. Scarpulla's term, they became real shadow leads,
15 shadow in the sense we didn't even know about it.
16 Shadow in the sense that they were behind the scenes and
17 it was detrimental.

18 Now, what does that all have to do with what
19 we're doing here today? And it's in the papers. The
20 Samsung settlement offer, the Philips settlement offer,
21 and I might mention Mr. Scarpulla was advocating early
22 on for a quick deal with Philips. And in the low -- in
23 the low teens, I think 14 million for Philips, saying
24 you got to get them out, 14 million. We've got 175 from
25 them. The ironic thing about that is now Mr. Scarpulla

1 says, "You didn't get enough. You went cheap. I could
2 have got more. I'm the antitrust lawyer of the century.
3 I could have gotten more."

4 I think I misspoke -- "the antitrust lawyer of
5 the year. I would have gotten more." Those activities
6 unfortunately -- I mean, you've to call a spade a spade.
7 It was officious intermeddling. I think that's the term
8 in the law, officious intermeddling. And it was
9 detrimental, and how it plays into this analysis is that
10 it needs to be taken into account in allocating a fee
11 for both Mr. Scarpulla and Mr. Cooper. And here's the
12 standard. Here's the -- here is the standard we use
13 when we made this allocation.

14 And this is directly from the order in the LCD
15 case. Did these people, Mr. Scarpulla and Mr. Cooper --
16 and this applies to some degree to Ms. Moore -- did
17 these people, quote, "act collaboratively to prosecute
18 the joint IPP effort? Did they act collaboratively to
19 prosecute the joint IPP effort?"

20 These points are all in the brief, Your Honor,
21 but I want to just have it in front of you in summary
22 fashion. And I want to make sure that you know what all
23 the fuss is about here. Because this is what the fuss
24 is about. They have no client. They represent
25 themselves. Mr. Cooper did no substantive work in the

1 case. There's no time sheets from Mr. Cooper.
2 Mr. Bogdanov was responsible for the work for his firm.
3 Mr. Cooper did no work, and yet Mr. Cooper is injecting
4 himself into the most delicate aspect of the case
5 settlement in a multi, multimillion dollar case, working
6 behind the scenes at cross purposes to other counsel.
7 I've described to you what that is. There's more in the
8 papers, but I've given you the flavor of what that is
9 about. Here is one of the biggest problems of all.
10 Mr. Cooper represented the California class rep. We
11 sent him a copy, or we informed him of the settlement.

12 SPECIAL MASTER QUINN: Wait a minute. I thought
13 you said they didn't have any client.

14 MR. ALIOTO: They had a client -- good point.
15 They had a client in the case. Mr. Cooper had a client
16 in the case. Mr. Scarpulla represented the Zelle
17 clients. All right. When it came time to object to the
18 settlement, Mr. Cooper didn't come in and object on
19 behalf of his client. He came in and objected for -- I
20 think it said for the indirect purchaser class.

21 SPECIAL MASTER QUINN: I recall that.

22 MR. ALIOTO: Mr. Scarpulla came in and objected
23 on behalf of Zelle's client, and Zelle contacted him and
24 said, "Hey, wait a minute, this is not right. That's
25 not your client." The whole thing was a little unseemly

1 to put it mildly. But as it panned out and as it shook
2 out, when they were making the objections to the
3 settlement, they were making them for no one. They
4 were -- they were in a rogue capacity, for want of a
5 better term. But the important point, to take a step
6 back, we served everyone with the preliminary approval
7 papers in advance.

8 This is very important because these people,
9 Scarpulla and Cooper, were in the case. They got the
10 preliminary approval papers. Plan of allocation, the
11 notice process, the description of the settlements.
12 Everything you need to know about the settlement was in
13 those papers. We got some hue and cry from Cooper and
14 Scarpulla, they had some big to-do, some big objection
15 about they were concerned about how their fees would be
16 decided on and what the procedure was going to be on the
17 fees. We took care of that. We resolved that. But
18 there was no problem with the notice and all of these
19 various issues that you dealt with on final approval.

20 None of that stuff was brought up. If it was
21 brought up, we could have sat down, worked it out and
22 not had to go through -- this was back in I think around
23 May of 2015. Here we are in October of 2016, well over
24 a year out from when we originally filed these papers.
25 We could have avoided all that.

1 Why did they do that? Why did they sit back, not
2 raise the objections, then and wait until a multimillion
3 dollar notice went out and then make the objections?
4 Well, I'll get to that in a minute. That's the coup de
5 gras. The important thing is, they objected to the
6 settlements. They objected to the aggregate fee,
7 Mr. Scarpulla, Mr. Cooper. Are they acting
8 collaboratively to prosecute the joint IPP effort? Are
9 they pushing here? Are they with the team? Are they
10 with the cause, trying to get this thing done, trying to
11 get the money to the claimants?

12 Now it's been approved. The settlement has been
13 finally approved on your recommendation, finally
14 approved by the Court, the aggregate fee on your
15 recommendation adjusted by Judge Tigar but finally
16 approved. Mr. Scarpulla and Mr. Cooper, notice of
17 appeal to the Ninth Circuit.

18 Are they acting collaboratively to prosecute this
19 effort? They're acting to turn the settlement upside
20 down. They're acting to throw the fees out. Their
21 objections for the most part rejected, and some in some
22 very strong terms as bordering on frivolous, as having
23 absolutely no foundation, no basis, some very statements
24 as to some of their objections.

25 And finally Mr. Cooper. Just parenthetically I

1 might add, he has a plaintiff who is due to receive a
2 very substantial incentive award and who is due to
3 receive a share of the fund for his purchases. That's
4 Mr. Cooper's client. Mr. Scarpulla doesn't have any
5 underlying client, but Mr. Cooper's client is being held
6 hostage now by Mr. Cooper because it's all on appeal.

7 SPECIAL MASTER QUINN: Well, even if Mr. Cooper
8 were to withdraw his appeal tomorrow, you'd still have
9 all of the other appeals. So you couldn't pay the
10 incentive award anyway.

11 MR. ALIOTO: Well, that's true. But does that --
12 but is Mr. Cooper acting collaboratively to prosecute
13 the joint IPP effort?

14 SPECIAL MASTER QUINN: I understand your point.

15 MR. ALIOTO: Okay. Thank you. I'm sorry to beat
16 it to death. Why are they doing all of this? Why are
17 they doing all of this? To help the class as they say?
18 To guarantee the rights of -- I think Mr. Cooper said,
19 "I want to guarantee the rights of resellers" back when
20 we had those proceedings about Chunghwa.

21 He doesn't represent resellers. He doesn't
22 represent anybody. Resellers had due process notice.
23 They could have opted out. They could have objected.
24 They didn't need Mr. Cooper to get in there and pitch
25 for them. Was that acting collaboratively to prosecute

1 the joint IPP effort? Now we have a little piece of the
2 settlement out here. More expense, more notice costs,
3 more claims period. It's very small amount of money
4 going to be claimed by huge resellers. I don't know how
5 that's going to all play out, but that is a concern.

6 The reason I bring this up is if they want to do
7 that as a strategy move, if they want to proceed in that
8 fashion, if they feel they are not part of the case and
9 they want to go sideways and they want to take the case
10 on and they want to take on this role of objectors, if
11 they want to -- I'm sure this will come as no surprise
12 to you that these objectors, they try to upset things.
13 They claim compensation.

14 Ms. Moore tried to -- is claiming compensation
15 for upsetting the fee award. Said, "I saved
16 14 million." That -- whether that is going to --
17 position will be sustained remains to be seen, but I'm
18 trying to illustrate the position. "I saved
19 \$14 million. I want money." Mr. St. John said because
20 of him your recommendation was changed by Judge Tigar
21 because of Mr. St. John. He wants a very substantial
22 award.

23 If past is prologue, you can expect to see
24 Mr. Scarpulla and Mr. Cooper seeking some type of award
25 if they are successful or trying to get some benefit or

1 some leverage out of the delay that their appeals are
2 going to cost. And it is not unknown and not unheard of
3 for objectors who are holding the process captive to go,
4 for example, to the claims aggregators. Hey, you --

5 SPECIAL MASTER QUINN: Okay. I think we're
6 spinning off into speculation of what might happen. I
7 know how the process works.

8 MR. ALIOTO: That is all I wanted to convey, Your
9 Honor. So what the real point is if I can bring this
10 home -- and I'm sorry for going adrift here -- the real
11 point is, these factors enter into the allocation to
12 Mr. Scarpulla and Mr. Cooper. You can't treat them the
13 same as somebody who's in here working to get these
14 settlements done and someone who has been part of a team
15 to get this result.

16 SPECIAL MASTER QUINN: Okay. I'm sorry to
17 interrupt, but I just want to be sure I get my questions
18 answered. What about Mr. Bogdanov's work? I don't know
19 if Ms. Kirkham did any work on the case, but I
20 understand most of the Cooper work was done by
21 Mr. Bogdanov.

22 MR. ALIOTO: That's correct --

23 SPECIAL MASTER QUINN: And they have a pretty
24 healthy Lodestar. I forget what it was, but it's a
25 healthy one. Do you have any criticisms of the quality

1 of his work or any reason arising out of his work for a
2 fee reduction?

3 MR. ALIOTO: I have some good news for on that
4 and some bad news. The bad news is, yes, we believe
5 that the description of his work was embellished, and we
6 believe that -- we believe that he had a much higher
7 view of the value of that work than we had. So that's
8 the bad news. The good news is I'm not going to get
9 into that in detail because it's all in the briefs.
10 It's in our brief, our -- it's in our omnibus response,
11 number one.

12 And as Your Honor knows, there's still pending
13 that motion to strike, there's a motion to strike out
14 there. Mr. Scarpulla -- excuse me -- Mr. Cooper filed a
15 motion to strike. We responded to the motion to strike,
16 and a reply is due very shortly. But our comments on
17 Mr. Bogdanov are in our opposition to the motion to
18 strike. I can give you his dockets.

19 SPECIAL MASTER QUINN: No, I have them.

20 MR. ALIOTO: Okay. 4911, 4911-2. It's all in
21 there. And, no, we're not critical, and no, we're --
22 no, we're not critical and no, we don't want to
23 castigate anybody's work, but we believe that he's given
24 it more importance than we gave it in our allocation.
25 That's the only point I want to convey on that. So the

1 quality of the work, applying these factors.

2 SPECIAL MASTER QUINN: But for the issues you
3 have with Mr. Cooper's actions, what kind of a
4 multiplier would you have given did the Kirkham firm?

5 MR. ALIOTO: He probably would have had some
6 multiplier. I can see that. But it would not be up in
7 these higher tiers. There's no way it could have been
8 in those higher tiers. It would have been down in the
9 document-level range tiers. And again, I don't say that
10 in a disparaging way. Document work is important. But
11 relative to what other people were doing, strategy
12 decisions, trial work, it would be on the lower range of
13 the spectrum.

14 SPECIAL MASTER QUINN: Okay. So this is
15 important and I know it's important to you. Have you
16 said for the moment everything you have to say?

17 MR. ALIOTO: The only other thing I would like to
18 say is I would like to have three minutes of clean-up at
19 the end for housekeeping details.

20 SPECIAL MASTER QUINN: Okay. Ms. Kirkham, there
21 have been some glancing references to Mr. Cooper. Do
22 you have anything you want to say, or do you want to let
23 Mr. Scarpulla carry your torch?

24 MS. KIRKHAM: Actually, I have a few things I
25 would like to say. And one of them, actually, you bring

1 up when you ask me that question. And that is that as
2 you look at this record, I would really encourage you to
3 look separately at Mr. Scarpulla and Mr. Cooper. They
4 are not law partners. They're not Siamese twins. There
5 is no basis for imputing the conduct of Mr. Scarpulla to
6 Mr. Cooper or the conduct of Mr. Cooper to
7 Mr. Scarpulla. Lead counsel lumps them together, but I
8 believe that you need to look at them separately and
9 look at what each one did.

10 I didn't interrupt during that long, long
11 dissertation because you had said at the beginning of
12 the hearing that you did not consider anything that was
13 being said at the hearing evidence. And that brings me
14 to another point that I would like to make, which is
15 that you have to look at what -- which of lead counsel's
16 claims are based in evidence and which of them are
17 argument, inference, speculation, because I think that
18 that's very instructive to take a look at what does the
19 evidence say happened, not what sinister inferences does
20 lead counsel bring to that evidence. And there is no
21 evidence -- and I think this goes to Mr. Scarpulla, but
22 certainly there is no evidence that any action of
23 Mr. Cooper in any way directly impaired impeded the
24 activities of other counsel in the case in bringing the
25 case to a successful conclusion.

1 That also brings me to the couple of things that
2 there is evidence of Mr. Cooper's doing. And it kind of
3 brings me to this whole question of I believe you've got
4 to make a determination and get the evidence on whether
5 or not there was, in fact, an agreement between
6 Mr. Alioto and the Zelle firm about what Zelle's role
7 was going to be, because a significant chunk of the
8 evidence that is in lead counsel's papers, or so-called
9 evidence about what Mr. Cooper and Mr. Bogdanov did that
10 was so terrible and so unauthorized was -- were
11 activities that were done in conjunction with Zelle
12 Hoffman. And this is the activity in early 2013 with
13 regard to the quote, unquote settlement overtures to
14 Philips.

15 All the evidence shows is that there were
16 conversations between lawyers at Mr. Bogdanov and
17 Mr. Cooper and lawyers at Zelle Hoffman. These were not
18 behind the scenes. Those time sheets show that
19 Mr. Alioto was talking to Zelle at the same time that
20 Zelle lawyers were talking to Mr. Cooper and asking
21 Mr. Bogdanov to write an e-mail, as Mr. Corbitt did,
22 about his thinking on the evidence. And you've got to
23 look at actually what the evidence is, but if, in fact,
24 Zelle was authorized at that point in time to act as, in
25 effect, a co-lead counsel, then Mr. Cooper's activities

1 with Zelle can't be unauthorized. And they went no
2 further than Zelle. There is no evidence that
3 Mr. Cooper's activities, that he ever talked to a
4 defense counsel.

5 So you've got to look at what the actual evidence
6 is, and you've got to ask yourself whether or not that
7 evidence shows that Mr. Cooper's alleged lack of
8 collaboration had any deleterious effect on the interest
9 of the class. And I want to say one thing about the
10 oft-quoted reference to those words from Judge Illston
11 in LCD.

12 There is only one case in the history of class
13 actions that I could find that suggest that a factor in
14 assessing the value of and the contribution of a law
15 firm in a case is whether or not that firm was a team
16 player. As long as the firm did its work, and there's
17 no question that Mr. Bogdanov, that Cooper and Kirkham
18 to Mr. Bogdanov, and to a much lesser extent myself, did
19 our work, did our jobs.

20 There is no subjective litmus tests of, you know,
21 did lead counsel like you? Were you a team player?
22 Were you collaborative and cooperative? Did you ever do
23 anything that was against what lead counsel wanted? I
24 would really -- you know, it found its way into the
25 lexicon in LCDs. It found its way into the lexicon

1 because Judge Illston was listing the factors that the
2 special master in LCDs, who we all know very well,
3 considered in dealing with a special situation there
4 between Joseph L. Alioto and the Zelle firm.

5 And I really -- as we said in our papers, this is
6 a highly elastic term, dangerously elastic, and to now
7 start to put this in as a valid consideration, unhinged
8 from the traditional measure of whether the activity
9 benefited the class or did not benefit the class, is
10 very dangerous.

11 And, in fact, the law really says there are kind
12 of like three levels. There is activity that benefited
13 the class for whom there clearly should be adequate,
14 fair and reasonable compensation. There is activity
15 that didn't benefit the class but didn't harm anything,
16 for which maybe you don't pay for it. That's
17 duplicative work and that sort of thing. And then,
18 third there is activity that is in conflict with the
19 interests of the class. And that is the only category
20 that I know of that has ever been held to justify a
21 punitive measure such as lead counsel is proposing here.

22 SPECIAL MASTER QUINN: Let me ask you,
23 Ms. Kirkham, how did it benefit the class to raise
24 objections to the settlement which made, you know, legal
25 arguments about the, you know, propriety of the

1 settlement and whether -- you know, whether it should be
2 approved? How did that benefit the class?

3 MS. KIRKHAM: That actually sits in its own
4 little category of consideration. The law holds that
5 settlement objections are beneficial.

6 SPECIAL MASTER QUINN: Well, some are.

7 MS. KIRKHAM: The law says that -- the Court is
8 too. Unless they're frivolous, there has been no
9 suggestion that anything we raised was frivolous. The
10 law says that central to the approval process which is
11 of benefit to the class, in an open discussion of all of
12 the issues surrounding the approval process, and the
13 question of whether the -- you know, the releases were
14 too broad, the question of whether the resellers should
15 be paid, all of those questions were appropriately
16 raised. The Court treated us as -- you know, the Court
17 said that we didn't have perhaps technical standing, but
18 the Court treated us as amicus because we raised
19 beneficial questions. The law says that objectors are
20 not -- there are lots of things. We don't make
21 objectors pay the attorneys' fees if they lose in their
22 objection because that would have a chilling effect on
23 objection. We don't make objectors pay bonds based on
24 the value of the case because that would have a chilling
25 effect on objectors.

1 The law is very clear that you don't punish
2 objectors. The question of whether you compensate them
3 is slightly different, but that's not what we're
4 actually talking about here because none of that time is
5 at issue for compensation. So the question here is
6 saying that can -- it's okay to treat outside objectors
7 as benefiting the class, and the law is clear that we
8 do, of whether they win or lose, but what's happening
9 here is that the -- that the talk about collaborative
10 and team playing is raising a new area of the law which
11 is that if someone inside the class, Someone who is the
12 most knowledgeable, actually, in raising an objection,
13 raises an objection to assessment, disagrees with lead
14 counsel, then it's okay to punish them. We will chill
15 that kind of activity.

16 SPECIAL MASTER QUINN: Okay. I get your point.
17 I want to make sure everybody gets a chance to speak
18 here.

19 Mr. Scarpulla?

20 MR. SCARPULLA: I just have a couple of things,
21 Your Honor. First of all, on that issue that you just
22 asked about, what is the objection, How do we benefit
23 the class, that's something that's going to be decided
24 in the future if we're successful in the Ninth Circuit.
25 That has nothing to do with the prior time and what we

1 did prior to any of those objections. That's not a
2 relevant fact to be considering whether what we did
3 previously benefited the class. That's the issue on
4 this hearing for the allocation of this amount of money.
5 It has nothing to do with time which has not been put
6 before the Court, because none of the time is in
7 anybody's Lodestar, to my -- at least it's not in mine.
8 And I don't know whether it's in Cooper's. I don't
9 think so, but I don't know.

10 So I just want to make that clear that if we win,
11 then of course we've benefited the class. And you won't
12 know that until the end.

13 SPECIAL MASTER QUINN: Well, if you win and you
14 undo Judge Tigar's order approving the settlement, there
15 is no settlements.

16 MR. SCARPULLA: Correct. You come back down.

17 SPECIAL MASTER QUINN: Maybe you can negotiate a
18 better settlement with the defendants. Maybe you can
19 negotiate a worse settlement. Time moves on.

20 MR. SCARPULLA: Exactly.

21 SPECIAL MASTER QUINN: And did your -- the
22 objections that you and the Cooper firm raised, did they
23 not, you know, put the class at some unnecessary risk,
24 maybe out of good and proper motives, but is that
25 something that is fair to consider in allocating

1 attorney's fees, that you put the class at some
2 considerable risk here?

3 MR. SCARPULLA: If at the end of the case when
4 those issues have been decided, but not for this portion
5 of the case, because that has nothing to do with it. We
6 could go up to the Ninth -- we could come back -- if the
7 Ninth Circuit reverses it, we could come back and try
8 the case and end up with \$2 billion. That's a much
9 better deal for the class.

10 SPECIAL MASTER QUINN: I'm sorry. I mean, I know
11 that this is -- you know, but it's been the elephant in
12 the room for me ever since I had to deal with these
13 objections, which is the quite unusual situation where
14 two class counsel, distinguished members of the
15 antitrust bar, are objecting to essentially their own
16 settlement.

17 And I'm not suggesting there was anything
18 improper about it, but it's such an odd situation and it
19 put the class at, you know, a real risk. And it also, I
20 understand, has a potential gold mine at the end. It
21 can go either way. But why did you think it was
22 important to do that? And why do you think it is
23 irrelevant to the attorneys' fee determination?

24 MR. SCARPULLA: Because we did not believe that
25 the settlement, the way it was structured, was fair to

1 the class. We objected -- what we objected to, Your
2 Honor, was that portion of the settlement which released
3 claims for half the country with no consideration. We
4 didn't object to any -- that's what we objected to. So
5 the only thing that can happen there is that those
6 people get money, not from -- not from the current fund
7 of money but new money. That's the objection. So it
8 has nothing to do with putting at risk the \$500 million
9 to this class.

10 SPECIAL MASTER QUINN: Okay. I understand.

11 MR. SCARPULLA: Okay.

12 SPECIAL MASTER QUINN: Why is it irrelevant --
13 why is it improper for lead counsel who, you know, for
14 good or ill is trying to run this locomotive, and you
15 know very well how hard it is to be lead counsel and how
16 challenging that position is? Why is it not appropriate
17 for that to be a consideration in deciding how much
18 multiplier to give?

19 MR. SCARPULLA: Because we were successful in the
20 objection we made with regards to the Chunghwa
21 settlement. They had to do it over again. We were
22 successful in that. We were successful in reducing the
23 amount of fees to 14 million. I'm not asking for any of
24 that the right now. I'm not asking to be compensated
25 for that. That is something that might occur in the

1 future, but that's not now. That's not for now. And so
2 we were successful in two of these things that benefited
3 the class. Additionally, if we're successful in the
4 argument that half the country should receive some kind
5 of consideration over and above what is already in the
6 bank, then we will have been successful for that --
7 those members of the nationwide class.

8 MS. KIRKHAM: Can I also say one thing? If you
9 look at this as a conceptual legal question as opposed
10 to right here, the assumption of your question, Special
11 Master Quinn, is that the settlement is a good thing, or
12 that I guess any settlement is a good thing.

13 Because if you're going to -- if you're going to
14 set up a legal standard that chills internal -- chills
15 lawyers for the class in objecting to a settlement
16 negotiated by lead counsel, then you have to assume that
17 that objection is wrong. It's a bad thing to have
18 happen. It's bad for the class. So that has to assume
19 that the settlement is good for the class.

20 But the law books are filled with settlements
21 that are overturned by the Courts of Appeal because they
22 aren't in the best of interest of the class.
23 Settlements that the lead counsel in those cases, I'm
24 assuming, negotiated in perfectly good faith and
25 proposed in perfectly good faith. I mean, some of them

1 you might wonder about, but most of them. And so you
2 can't come at it backwards by saying that, you know, any
3 settlement is better than litigating and therefore
4 anything that challenges a settlement is detrimental to
5 the class. You can't make that a rule of law. And
6 therefore we are going to set up a standard on fees that
7 chills this kind of dissent, this kind of objection.

8 SPECIAL MASTER QUINN: Okay.

9 MS. KIRKHAM: Unless -- okay.

10 SPECIAL MASTER QUINN: I get it. And I want to
11 caution everybody. Don't read any imputation of what my
12 thinking might be into the questions I ask. And also
13 another comment Ms. Kirkham made, I don't want you to
14 think I am not paying attention to rules of evidence
15 with respect to the stuff that's in writing. I am. And
16 I know how to, I think, distinguish evidence from
17 speculation, and I'll be attentive to that. It's just
18 in these oral hearings I'm trying to get the information
19 I need without being unduly restrictive.

20 Is there anybody else on the call? I know there
21 are people in the room who may want to speak, but is
22 there anybody else on the call who has anything they'd
23 like to add? All right. Hearing silence, I don't know
24 whose turn it is. Mr. Scarpulla, go ahead.

25 MR. SCARPULLA: I had one other point.

1 Mr. Alioto said something about me telling him --
2 talking to him about the Philips settlement and \$14
3 million. I don't -- I never discussed money with the
4 defendants when they called and said, "We can't get this
5 case settled." I kept telling them, "You have to get in
6 touch with the special master. He's in charge of that,
7 and if you have a problem, you call him." I -- and
8 Mr. Alioto said I never -- that I was doing all this on
9 my own hook. I wasn't.

10 I was consulting with people at Zelle, and we
11 were supposedly the shadow co-leads. And I did talk to
12 Mr. Alioto on several occasions. He just told you I
13 talked with him one time and told him we should take \$14
14 million from Philips. When I talked to him initially,
15 it was about the LG settlement. I told him it was way
16 too low. You can't take 25 million from this big
17 company who has the ability to pay, get it from somebody
18 else where there's a problem. At Philips there was an
19 evidentiary problem. It was sequencing. It had nothing
20 to do with amounts. Okay?

21 And I would -- and Mr. Corbitt knew exactly what
22 was going on because he and I would talk about this.
23 And he was the one who was having the conversations with
24 Mr. Alioto. It's all over their time sheets. So you
25 know, it's not like we were acting in a vacuum and in

1 secret here. Everybody knew what we were doing. We
2 were trying to produce the best result for the class.

3 SPECIAL MASTER QUINN: And I think while you were
4 doing all the things that are at issue here, you were
5 with the Zelle firm.

6 MR. SCARPULLA: Absolutely.

7 SPECIAL MASTER QUINN: Okay. Mr. Alioto and
8 Ms. Capurro, anything further?

9 MR. ALIOTO: I would like to just have my
10 housekeeping matters, and I'd like to just make one
11 statement to follow-up on your comment, and if you want
12 to cut me short, that's fine. But it has to do with the
13 risk and the danger to the settlement. And this
14 is -- this is not a fun part of my job because you have
15 these two objectors out there. And as Your Honor knows,
16 there are still active motions, litigated matters before
17 Judge Tigar that have broad consequences for these
18 cases. There are rulings on FTAIA. There are
19 evidentiary --

20 SPECIAL MASTER QUINN: I saw one just the other
21 day.

22 MR. ALIOTO: There was one the other day. And
23 there is the prospect that this could go to the Court of
24 Appeal, and the Court of Appeal could tweak it in some
25 minor way or do heaven knows what. You know how this

1 goes when you go up on appeal with all of these issues.
2 Something could happen to this very, very good
3 settlement, and it could come down from the Ninth
4 Circuit. And the whole landscape could have changed out
5 in front of Judge Tigar by his rulings. And we could
6 then go to the defendants and say, "Okay. Now we want
7 to renegotiate this settlement and fix what the Court
8 wants us to do." And the defendants could very well be
9 not inclined to do anything. They might be happy with
10 the landscape as it is and want to scuttle the
11 settlement. That's what they are putting in play.
12 That's what they're risking.

13 And I am sure they are not aware of what's in
14 front of Judge Tigar. We watch it constantly. We
15 monitor it. Because although this case is settled, it
16 is far from over. We are working on it night and day,
17 believe it or not, monitoring what the judge is doing,
18 keeping an eye on the DAP cases. 13 of them are still
19 going on, and some will be remanded to other courts.
20 This is a very important issue for us that causes us a
21 lot of concern when we have to deal with these
22 objectors. I just wanted to follow up on the comments
23 you made about risk.

24 SPECIAL MASTER QUINN: Okay.

25 MR. SCARPULLA: May I just say one thing? We did

1 not object to the amount of money. And we didn't take
2 an appeal from the amount of money. We took -- we
3 objected to half the country getting nothing, and that's
4 what we appealed. So -- but there are other people
5 that -- not in this room, the usual suspects who have
6 appealed the amount. But we have not.

7 SPECIAL MASTER QUINN: Correct. Okay.

8 Ms. Capurro, you were waving your hands.

9 MS. CAPURRO: Just one small point very quickly.
10 Mr. Scarpulla stated with regard to LGE and Philips
11 that, you know, we shouldn't have taken 25 million from
12 LG but we should have taken 14 million from Philips.

13 MR. SCARPULLA: No, I didn't say that.

14 MS. CAPURRO: Well, that's what you said --

15 MR. SCARPULLA: I didn't say that.

16 MS. CAPURRO: I'm sorry. Can I finish?

17 MR. SCARPULLA: I said you shouldn't have taken
18 25 million from LG, and you should have negotiated with
19 Philips first. That's what I said. I didn't say an
20 amount.

21 MS. CAPURRO: Okay. I don't think that really
22 matters. They were happening around the same time,
23 April, May of 2013, prior to class certification. And
24 we elected to settle with LG because our understanding
25 of the evidence -- which I respectfully submit is far

1 superior to Mr. Scarpulla's, who have done virtually no
2 substantive work in the case as of that stage in the
3 case -- LG and Philips were members of LPD, big, huge
4 conglomerate. LG, unlike Philips, had no evidence of
5 their activities, anticompetitive activities in the
6 United States. Philips did. There was good evidence of
7 Philips here in the United States.

8 So we made the decision that of the two, we were
9 the only two defendants who were interested in
10 settlement at that stage, that LG was the better one to
11 settle with. And they were offering \$11 million more
12 than Philips. Philips, by the way, was fined
13 substantially more by the European commission. They
14 owned more of LPD than LG did, so aside from the actual
15 evidence of their conspiratorial activities, there were
16 other issues that we looked at. So we stand by the
17 decision to settle with LG at that point for \$11 million
18 more than Philips, and Mr. Scarpulla was being very
19 disingenuous to now try and criticize that settlement.

20 SPECIAL MASTER QUINN: Well, one thing that I am
21 not going to do is get into second-guessing settlement
22 agreements that were made. That's not the point,
23 really. The point is whether Mr. Scarpulla was or was
24 not off the reservation in offering his comments and so
25 on. It's not the amount in the settlement that's

1 critical.

2 MS. CAPURRO: With all due respect, I don't think
3 it was him offering comments. That's fine. It was
4 actually making settlement demands and now taking a
5 completely different position later on in saying that we
6 should have gotten -- we should have gotten more,
7 whenever he advocated that we take a smaller settlement
8 at that point in the case. The total settlements would
9 have been less if we had done what Mr. Scarpulla
10 suggested at that point.

11 MR. SCARPULLA: I don't know what she's talking
12 about.

13 SPECIAL MASTER QUINN: Okay. Anybody else? Some
14 housekeeping, Mr. Alioto.

15 MR. ALIOTO: Yes. You had inquired earlier in
16 these proceedings about an audit report. There is no
17 audit report.

18 SPECIAL MASTER QUINN: Let's be clear what we're
19 talking about. This is the audit report with respect to
20 time records, billing entries.

21 MR. ALIOTO: Yes. It was a fragmented process,
22 firms on firms.

23 Two, Mr. Scarpulla filed out of time a motion to
24 strike. There has been no request for leave to do that.

25 SPECIAL MASTER QUINN: Wait a minute. This is

1 Mr. Scarpulla filed a motion to strike?

2 MR. ALIOTO: Yes, it was four or five days after
3 Mr. Cooper did. It was out of time. There was no
4 request for permission. We would request that -- we
5 would file a motion to strike his motion to strike. We
6 don't think it's constructive to do any more briefing,
7 especially after the close of the hearings.

8 SPECIAL MASTER QUINN: Just remind me,
9 Mr. Scarpulla, what did you want to strike?

10 MR. SCARPULLA: I joined Mr. --

11 SPECIAL MASTER QUINN: I don't remember the
12 motion.

13 MR. SCARPULLA: I've joined Mr. Cooper's motion
14 to strike. And I said if you're going to strike it,
15 then strike the paragraph completely.

16 SPECIAL MASTER QUINN: I see.

17 MR. ALIOTO: Like most of what Mr. Scarpulla
18 says, that's not completely accurate, and to the extent
19 he just joins in Mr. Scarpulla's motion, we have no
20 objection. But he goes and makes additional requests
21 which should be stricken.

22 SPECIAL MASTER QUINN: Okay. Your requesting
23 that his motion to strike be stricken?

24 MR. ALIOTO: Precisely.

25 MR. SCARPULLA: Today is the day that we're

1 supposed to apply to that Mr. Alioto's response to the
2 motion to strike.

3 SPECIAL MASTER QUINN: Mr. Cooper's.

4 MR. SCARPULLA: That's why Mr. Cooper isn't here.
5 Mr. Cooper is filing something which we plan to get.

6 SPECIAL MASTER QUINN: Can everybody consider
7 carefully whether you really need briefing on
8 Mr. Scarpulla's motion to strike if it's the same thing?

9 MR. ALIOTO: I'm making it as an oral motion. I
10 don't want a loose end out there that we haven't
11 addressed.

12 MR. SCARPULLA: I'll respond to that. Mr. Alioto
13 filed late and he had no consequence. I was in Europe
14 trying to do this over an iPhone. I was only able to
15 join it and make an additional comment when I got back.
16 If late filing is okay for him, it ought to be okay for
17 me.

18 SPECIAL MASTER QUINN: So his was --
19 Mr. Scarpulla's motion was four days late?

20 MR. ALIOTO: Yes, Your Honor.

21 SPECIAL MASTER QUINN: Oh, my goodness. Okay.
22 Anything further?

23 MR. SCARPULLA: Yes, other housekeeping.

24 SPECIAL MASTER QUINN: Why do have keep asking
25 that question.

1 MR. ALIOTO: I just have two matters. I think
2 this will actually be helpful. There was another brief
3 by Mr. Scarpulla out of time, a supplemental brief
4 without leave. It's hanging out there for the record.
5 We would strike that so we don't have to respond to that
6 as well.

7 MR. SCARPULLA: Which one is that?

8 MR. ALIOTO: It's entitled "Supplemental Brief."

9 MR. SCARPULLA: Well, I know. That's the one
10 that has --

11 MS. KIRKHAM: This is Tracy Kirkham. You must be
12 referring to the putting the documents in the Cipro
13 cases into the record, right?

14 MR. SCARPULLA: That must be it. Or you can take
15 judicial notice of it anyway.

16 MR. ALIOTO: We want to be on record as moving to
17 strike and not having to respond to that.

18 And finally, Special Master, this may or may not
19 be helpful, but there is a kind of a loose end regarding
20 Mr. Lingel Winters.

21 SPECIAL MASTER QUINN: It's not loose as far as
22 I'm concerned.

23 MR. ALIOTO: Okay.

24 SPECIAL MASTER QUINN: I am -- I was told by
25 Judge Tigar to take care of it and I will take care of

1 it.

2 MR. ALIOTO: Right.

3 SPECIAL MASTER QUINN: Now, have you -- I think
4 you filed some kind of papers opposing it and he didn't
5 reply.

6 MR. ALIOTO: I don't want to belabor this, but we
7 had the order of reference to the special master. We
8 had a proposed allocation pursuant to the order. It was
9 incumbent upon Mr. Winters, as it was with all of the
10 counsel, to object to that allocation. He never did
11 that.

12 SPECIAL MASTER QUINN: Right.

13 MR. ALIOTO: He filed a motion with Judge Tigar.
14 We couldn't figure out exactly what he was doing, but he
15 filed a motion with Judge Tigar. We responded to the
16 motion. And Judge's Tigar now has kicked that back to
17 the Special Master. So the only point I have is, there
18 are, I guess some filings. It's a motion. We've
19 objected to the -- we've responded to the motion, so
20 that's the state of the record, motion response. Our
21 point -- and just to sum up our point is it's late. He
22 didn't follow the procedure. But if Your Honor wants to
23 get to the merits, we have an opposition to his motion
24 in the record. So long story short, it's out there.
25 Probably be better to address it as Your Honor sees fit.

1 SPECIAL MASTER QUINN: I'm going to address it as
2 part of this, absolutely.

3 MR. ALIOTO: Thank you.

4 MR. SCARPULLA: I have a housekeeping question.
5 Are we going to get a copy of the e-mails from
6 Mr. Alioto and Mr. Zelle about their agreement in the
7 record? I've requested it. We know it exists.

8 MR. ALIOTO: Maybe I can --

9 SPECIAL MASTER QUINN: I'm frowning because I
10 only want information that's going to be helpful to me,
11 and I'm not sure that's going to be helpful to me.

12 MR. SCARPULLA: It might be part of the record on
13 appeal, Your Honor. That's why I've asked that it be
14 placed in the record along with any other fee-sharing
15 agreements they have that they gave you, didn't put in
16 the record.

17 SPECIAL MASTER QUINN: I think representations
18 have been made that there are no fee-sharing agreements
19 except for the ones that have been disclosed.

20 MR. SCARPULLA: Yeah, but where are they
21 disclosed? I haven't seen them.

22 SPECIAL MASTER QUINN: We had earlier some
23 fee-sharing agreements were filed. I don't remember
24 what they were, and it's in the ECF filings.

25 MR. SCARPULLA: Yeah, but that's the agreement

1 that I have with my separation agreement with Zelle.
2 That's the only one that I know of. I don't think
3 anything else was filed in the record.

4 SPECIAL MASTER QUINN: Okay. Let me ask
5 Mr. Micheletti. These, as I understand it, are --
6 Mr. Scarpulla is talking about are e-mails among members
7 of your firm and maybe with Mr. Scarpulla.

8 MR. SCARPULLA: No, no, with Mr. Alioto.

9 SPECIAL MASTER QUINN: Okay. With Mr. Alioto
10 about the arrangement, if any, between Trump, Alioto and
11 Zelle and I think you've told me yesterday or the day
12 before, you're not aware of any such e-mails or
13 something. If there's any -- do you have any objection
14 to producing them?

15 MR. MICHELETTI: What I said was there was no
16 agreement. And there was reference made to Mr. Corbitt
17 recently sent you something. And I answered no, he has
18 not. There are two e-mail communications that I am
19 aware of that bear on this topic. It is Zelle's
20 position, and I'm here speaking on behalf of Zelle, that
21 those do not represent an agreement between Zelle and
22 lead counsel.

23 SPECIAL MASTER QUINN: Can you tell me who the
24 "from" and "to" are on those e-mails?

25 MR. MICHELETTI: Mr. Alioto and Mr. Corbitt.

1 MR. ALIOTO: I can tell you the background, Your
2 Honor. This is counterproductive.

3 SPECIAL MASTER QUINN: You know what, here's what
4 I would like. I've heard an awful a lot about this, and
5 I think the safest thing for me to do is to take a look
6 at these e-mails if they should be submitted under seal.
7 They may be, but I think I should take a look and let
8 the documents speaks for themselves. I've heard quite
9 enough about what everybody says. I've heard
10 representations, very definitive representations there
11 was no such agreement to divide the responsibilities of
12 co-lead counsel. And I'd like to see the documents that
13 caused all this problem. And you can make a decision
14 whether you file those openly or under seal, but I'd
15 like you to do that.

16 MR. MICHELETTI: Okay.

17 MR. SCARPULLA: Do I get to look at them?

18 MS. KIRKHAM: Just a point of clarification, when
19 you say "under seal," you mean under seal the way we've
20 been filing things under seal, that being that they're
21 served on the counsel in the case but not put into the
22 public record for John Doe to walk off the street and
23 look at?

24 SPECIAL MASTER QUINN: That was my thought.

25 MR. SCARPULLA: As long as I get to see them,

1 they can file them under seal. One other thing, just a
2 housekeeper. Mr. Alioto just told you there was no
3 audit or report. That's what I thought I heard him say.

4 SPECIAL MASTER QUINN: With regard to billings,
5 not talking about expenses, billings.

6 MR. SCARPULLA: We're talking about Lodestar
7 audit reports; is that correct?

8 SPECIAL MASTER QUINN: Correct.

9 MR. SCARPULLA: And there is none? There are
10 none; is that right?

11 MR. ALIOTO: That's right.

12 SPECIAL MASTER QUINN: That's what he said.

13 MR. SCARPULLA: I have an e-mail here from Fred
14 Corbitt who says that there is one, that he asked --

15 SPECIAL MASTER QUINN: If you want to talk about
16 hearsay, now we're really getting into hearsay.

17 MR. SCARPULLA: That's okay.

18 SPECIAL MASTER QUINN: This process must come to
19 an end, and I am not going to -- I am going to be
20 extremely reluctant to receive any further briefing, any
21 further papers from now on. You know, you're going to
22 look at those e-mails and you're going to want to write
23 me a five-page letter. Please restrain yourselves.

24 MR. SCARPULLA: No, I'm not going to say a word.

25 SPECIAL MASTER QUINN: This has to be decided.

1 Okay. Anybody have anything further?

2 MR. ALIOTO: Just don't unduly penalize us
3 because we have a prior request for some information.
4 An awful a lot of information has been sought from us in
5 these proceedings, and we have one pending request right
6 now.

7 SPECIAL MASTER QUINN: What is your request that
8 is --

9 MR. ALIOTO: For Mr. Cooper's time records.

10 SPECIAL MASTER QUINN: Wait a minute. Everybody
11 submitted time records.

12 MR. ALIOTO: Not Mr. Cooper, because he claims
13 that since he wasn't claiming any time for it... Now
14 he's put them at issue. I don't want to argue it. I
15 don't want to press the matter right now. I just wanted
16 to bring to your attention that there's a preexisting
17 request that we made.

18 SPECIAL MASTER QUINN: Okay.

19 MS. KIRKHAM: When was this request made?

20 SPECIAL MASTER QUINN: I do have a dim memory of
21 it, Ms. Kirkham. I am not inclined to order -- if
22 Mr. Cooper is not requesting to be compensated for any
23 time, I'm not inclined to order that he produce his time
24 records. I don't think they would be helpful to me in
25 making the allocation. And you know, the Court can note

1 for whatever weight it might have that he has declined
2 to produce his time records.

3 MS. KIRKHAM: But he hasn't declined to produce
4 it. I'm a little unclear. He didn't produce time
5 records because he didn't ask to be paid for anything he
6 did in the case. He said he did a declaration that
7 whatever he did, he was contributing and he wasn't going
8 to put in for supervising Mr. Bogdanov or consulting
9 with him or whatever all that was. And the other
10 amounts of time were so miniscule that he elected not to
11 put them in. He didn't report them contemporaneously
12 and he elected not to put them in, so he didn't put them
13 in. That's not a decline to produce time records.
14 That's the time records were never collected, never
15 processed, never submitted. They just weren't an issue.

16 SPECIAL MASTER QUINN: Okay. I was told he
17 declined to produce them, and I don't really care
18 whether he declined or didn't decline.

19 Okay. Anything further? All right. Thank you
20 everybody. The hearing is closed.

21
22 (TIME NOTED: 4:24 p.m.)
23
24
25

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

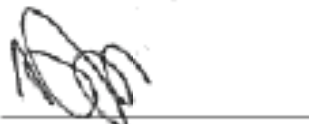
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: 10/19/16



23
24 JOANNA BROADWELL

25 CSR No. 10959

[& - adequate]

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